

¹ 5 U.S.C. § 8101 *et seq.*

fracture of the fourth metatarsal of the left foot and displaced fracture of the fifth metatarsal of the left foot. On July 26, 2017 appellant underwent authorized open reduction internal fixation (ORIF) left fourth and fifth metatarsal fractures with removal of defective hardware from the fifth metatarsal. The operative report indicated that he had undergone a prior probable ORIF left fifth metatarsal fracture (date unknown).

Appellant received disability retirement from the employing establishment effective October 29, 2018.

On September 25, 2019 appellant filed a claim for a schedule award (Form CA-7).

OWCP, in an October 9, 2019 development letter, requested that appellant submit an impairment evaluation from his attending physician addressing whether he had reached maximum medical improvement (MMI) and, if so, the extent of any permanent impairment, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² It afforded him 30 days to submit the necessary evidence. No additional evidence was received.

On February 21, 2020 OWCP referred appellant, together with a statement of accepted facts (SOAF) and the case record, to Dr. Stacie L. Grossfeld, a Board-certified orthopedic surgeon, for review and a determination of permanent impairment in accordance with the sixth edition of the A.M.A., *Guides* and the date of MMI.

In a March 12, 2020 report, Dr. Grossfeld noted a history of the June 26, 2017 employment injury and appellant's medical treatment. On physical examination of the left foot she reported a 6-centimeter (cm) incision over the fifth metatarsal and a long 10-cm incision over the fourth metatarsal. Capillary refill was less than one second at the tips of the toes present. Capillary refill involving the third toe was somewhat delayed compared to the other toes and was also on the contralateral side. Appellant was able to flex his second, first, fourth, and fifth toes, but he had some difficulty flexing his third toe. Sensation was intact to all dermatomes. Dr. Grossfeld also noted range of motion (ROM) measurements of the left ankle which included 25 degrees of dorsiflexion and 60 degrees of plantarflexion measured three times with a goniometer. She opined that, pursuant to the sixth edition of the A.M.A., *Guides*, appellant had zero percent permanent impairment of the left foot regarding his accepted work-related diagnoses of displaced fourth and fifth metatarsal fractures of the left foot secondary to normal ROM and the absence of specific permanent partial impairment for the diagnosis of metatarsal fracture with ORIF.

On April 12, 2020 OWCP referred the record to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for a review and rating of appellant's permanent impairment of the left lower extremity in accordance with the sixth edition of the A.M.A., *Guides*.

In an April 21, 2020 report, Dr. Harris reviewed a SOAF and the medical record, including the March 12, 2020 report of Dr. Grossfeld. Using the diagnosis-based impairment (DBI) rating method, he concurred with her that, under the sixth edition of the A.M.A., *Guides*, appellant had

² A.M.A., *Guides* (6th ed. 2009).

zero percent permanent impairment of the left lower extremity attributable to his diagnoses of status post probable ORIF left fifth metatarsal fracture (date unknown) and status post ORIF left fourth and fifth metatarsal fracture with removal of defective hardware on July 26, 2017. Referencing section 16.7, page 543, of the A.M.A., *Guides*, the DMA explained that the A.M.A., *Guides* allow for the ROM method to be used as a standalone rating when there were no DBI sections that were applicable or in rare cases when a severe injury results in passive ROM loss qualifying for class 3 or 4 impairment or for amputation ratings. Dr. Harris explained that, because the A.M.A., *Guides* did contain an appropriate DBI for appellant's diagnosed conditions, it did not meet any of the criteria of section 16.7, page 543, of the A.M.A., *Guides* to allow for impairment to be calculated under the ROM method. The DMA determined that the date of MMI was March 12, 2020, the date of Dr. Grossfeld's impairment evaluation.

By decision dated May 7, 2020, OWCP denied appellant's claim for a schedule award. It found that the opinions of Dr. Grossfeld and the DMA established that appellant had no permanent impairment of a scheduled member or function of the body, warranting a schedule award.

LEGAL PRECEDENT

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.³

The schedule award provisions of FECA,⁴ and its implementing federal regulations,⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members, or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).⁸ In determining lower extremity impairment, the sixth edition of the A.M.A., *Guides* requires identifying the impairment class of diagnosis (CDX), which is then adjusted by a grade modifier for functional history (GMFH), grade modifier for physical examination (GMPE), and/or

³ See *T.H.*, Docket No. 19-1066 (issued January 29, 2020); *D.F.*, Docket No. 18-1337 (issued February 11, 2019); *Tammy L. Meehan*, 53 ECAB 229 (2001).

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); see also *id.* at Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ A.M.A., *Guides*, page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

grade modifier for clinical studies (GMCS).⁹ The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹⁰

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the DMA providing rationale for the percentage of impairment specified.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish permanent impairment of his left lower extremity, warranting a schedule award.

On March 12, 2020 OWCP obtained a second opinion report from Dr. Grossfeld. Utilizing the sixth edition of the A.M.A., *Guides*, Dr. Grossfeld determined that appellant had zero percent permanent impairment of the left lower extremity due to his accepted displaced fourth and fifth metatarsal fractures of the left foot with an authorized June 26, 2017 ORIF. She explained that he had normal ROM of the left ankle and there was no specific permanent partial impairment for the diagnosis of metatarsal fracture with ORIF.

OWCP then properly referred the medical record to the DMA, Dr. Harris, who provided an April 21, 2020 report. Using the DBI rating method of the A.M.A., *Guides*, the DMA concurred with Dr. Grossfeld's opinion that appellant had zero percent permanent impairment of the left lower extremity attributable to his accepted diagnosis of status post ORIF left fourth and fifth metatarsal fracture with removal of defective hardware on July 26, 2017. The DMA also attributed his zero percent left lower extremity permanent impairment rating to his diagnosis of status post probable ORIF left fifth metatarsal fracture of an unknown date. He opined that appellant's permanent impairment was not an exceptional circumstance which allowed rating under the ROM method, pursuant to the guidelines provided in section 16-7, page 543 of the A.M.A., *Guides*.

The Board finds that both Dr. Grossfeld and the DMA properly applied the A.M.A., *Guides* and provided rationale to explain their opinions that appellant had zero percent permanent impairment of the left lower extremity. Additionally, the Board notes that appellant failed to respond to the request to submit medical evidence supporting permanent impairment of a scheduled member or function of the body pursuant to the A.M.A., *Guides*, in response to OWCP's October 9, 2019 development letter. Accordingly, the weight of the medical opinion evidence is accorded to Dr. Grossfeld's March 12, 2020 second opinion report and the April 21, 2020 report of the DMA. As such, the Board finds that appellant has not met his burden of proof.

⁹ *Id.* at 494-531.

¹⁰ *Id.* at 515-22.

¹¹ See *supra* note 7 at Chapter 2.808.6(f) (March 2017); see *S.H.*, Docket No. 20-0253 (issued June 17, 2020).

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish permanent impairment of his left lower extremity, warranting a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 28, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board